

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,) Docket No. B-1829/
on its own motion, to conduct a) PI-195
departmental investigation of)
Golden Plains Services, Inc.,)
d/b/a GPS Transportation,) ORDER CLOSING INVESTIGATION
Lincoln, for alleged violations)
of Commission rules and state)
statutes.) Entered: December 11, 2018

BY THE COMMISSION:

On June 23, 2015, the Nebraska Public Service Commission ("Commission"), on its own motion, opened this docket to conduct an investigation of allegations that Golden Plains Services Transportation, Inc., d/b/a GPS Transportation (hereinafter "GPS"), Lincoln, violated Commission rules and regulations properly promulgated under state law. The Commission sought to investigate alleged violations of Neb. Admin.Code Title 291, Ch.3, section 010.02H1, which requires that "[. . .] all operators shall[. . .] be competent to conduct the service carefully and courteously;"¹ Neb. Rev. Stat. §75-315 subjecting the passengers referred to above to undue or reasonable delay; and Neb. Rev. Stat. §75-311 and §75-315 by operating in an unfit manner.

On March 4 and 5, 2015, a hearing was held before the Commission in which GPS sought to expand its authority to provide open class service in Lancaster County.² During the proceeding, the Commission was made aware of several complaints related to GPS services of Nebraska Department of Health and Human Services ("HHS") clientele, deemed valid by Intelliride. These complaints were filed with the Commission as a late filed Exhibit, number 13, to the March, 2015 proceeding. Those complaints are as follows:

¹ Neb. Admin. Code Title 291, Ch. 3, § 010.02H1 (Effective December 14, 2003) (renumbered as § 010.01(C)(i), effective November 23, 2016).

² *In the Matter of Golden Plains Transportation Services, Inc. d/b/a GPS Transportation, Lincoln, Nebraska, seeking to expand its authority as a common carrier of passengers by vans by the removal of its restriction against point-to-point transportation in Lancaster County, and by the amendment of the language related to the use of sedans by an open class carrier in an area where a taxi authority is operating. The transportation of railroad train crews and their baggage is not authorized. HHS Designation: Yes. Application No. B-1829 Supplement 1, Granted. (June 2, 2015).*

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Docket No. B-1829/PI-195

Page 2

1. On February 9, 2015, a visually impaired person alleged that GPS dropped off the client at the end of the block where the client resided, and not at the client's residence.
2. On February 17, a client reported that GPS did not strap the client down in a wheelchair, and the client was subsequently injured during the transportation.
3. On or about March 4, 2015, a driver for GPS was reported to have traveled over a speed bump at a rate of speed that caused the passenger to suffer a back injury.
4. Between May 29, 2014, and March 11, 2015, GPS was reportedly late for picking up a passenger eighteen times (May 29, 2014; July 18, 2014; August 6, 2014; September 29, 2014; October 7, 2014 (twice); October 21, 2014 (twice); December 1, 2014; December 9, 2014; December 17, 2014; January 21, 2015; February 6, 2015; February 19, 2015; February 25, 2015; and March 11, 2015 (twice), causing many of these individuals to miss doctor's appointments and on one occasion, to miss the beginning of a dialysis appointment.)
5. Between July 26, 2014, and February 25, 2015, drivers for GPS did not wait the contractual time period for a pick-up of a client (July 26, 2014; October 7, 2014; November 5, 2014; November 13, 2014; December 1, 2014; and February 25, 2015).

A hearing was held September 29, 2015, and a second hearing was held April 21, 2016. Mr. Mark Breiner and Ms. Jamie Reyes appeared for the Commission, and Mr. Jack Shultz appeared on behalf of GPS Transportation.

EVIDENCE

At the hearing held September 29, 2015, Transportation Department Director, Mark Breiner, testified that the Transportation Department ("Department") sought information related to these complaints from Health and Human Services Director of Medicaid Transportation, Ms. Courtney Miller, through a subpoena. Ms. Miller indicated in HHS's response that HHS could not provide that information as it "was not related to

the administration of the Medicaid program."³ Mr. Breiner further noted he asked Ms. Miller to contact seven clients in particular and let them know the Department was investigating complaints related to their experiences with GPS so they could contact the office.

According to Mr. Breiner, Ms. Miller indicated that of the seven clients of interest, only three were still in the system. Of the three clients remaining in the HHS system, only one client contacted the Commission, which was related to the complaint involving the individual whose wheelchair was not strapped down. Based upon information gathered by Mr. Breiner during the call, the Department determined that the client's complaint involved another carrier and not GPS.⁴ Mr. Breiner offered the following Exhibits which were received into the record--Exhibit 2, a copy of late-filed Exhibit 13 from March 2015; Exhibit 3, a copy of the June 23, 2015 order opening this investigation; Exhibit 4, a copy of the Department's subpoena and related documents to HHS; and Exhibit 5, a copy of HHS's response to the Department's subpoena and its Motion to Quash the subpoena.

Mr. Kirby Young testified on behalf of GPS as the company's President. Mr. Young discussed the GPS driver service quality expectations and company complaint procedures. Mr. Young indicated that complaints were handled on a case-by-case basis. When asked if GPS had any sort of formal written policy regarding what behavior by a driver would result in disciplinary action, Mr. Young responded, "There is nothing that is written that is hard and fast, you know, because I have been doing this far too long to have something and somebody pigeonhole me."⁵ Mr. Young went on to explain that if an action was egregious enough, a driver might be terminated. Mr. Young indicated if a complaint reaches disciplinary action, it will be written up and placed in a driver's file. However, many complaints do not rise to that level.⁶ GPS does not maintain a record of complaints other than the complaints being placed in individual driver files.

Upon questioning regarding the complaints from Intelliride, Mr. Young denied having seen the complaints previously, indicating that he did not become aware of the complaints until

³ Hrg. Transcr. 5:12-19 (Sept. 19, 2015)

⁴ *Id.* at 6:12-24

⁵ *Id.* at 15:24-16:2

⁶ *Id.* at 18:20-25

the previous proceeding where the complaints were entered into the record as an exhibit. Mr. Young also discussed the Performance Improvement Plans in place for Intelliride when there are a number of complaints. If a driver were not able to successfully complete the plan, he or she would be fired from GPS as well. If drivers receive a warning from GPS, they are not given written warnings, but the manager may write something up and place it in their file. In response to additional questioning, Mr. Young reiterated that discipline is entirely case-by-case. There is no formal process for discipline at GPS.⁷ Mr. Young later noted there was only one driver who had been placed on Performance Improvement Plan related to speeding and he successfully completed that program.⁸

Mr. Breiner questioned Mr. Young regarding the incident of a visually impaired man who was dropped off in the wrong location.⁹ Mr. Young stated no disciplinary action had been taken because the client in question was dropped off exactly where he had requested and the driver was the manager of the Omaha office. Mr. Breiner asked why the client would have filed a complaint with Intelliride if the client were dropped off where he wanted to be. Mr. Young did not have an explanation for this.¹⁰ Commissioner Rhoades questioned this further. Mr. Young described having spoken with the driver in question and was able to determine that the GPS driver had taken the client to the right location. He believes the date was incorrect in the complaint. Commissioner Rhoades asked why the client was not there to testify if it was a simple mistake. Mr. Young indicated he was unable to speak with the client directly.¹¹ Mr. Young then explained that he was relaying the driver's explanation of the events.¹²

Mr. Young further stated that the client was not here to testify, because a carrier is only allowed to contact clients if they contacted the carrier directly. He cannot contact clients proactively. Mr. Young asserted that he verified details regarding these complaints with his drivers, and believed that the complaints are inaccurate. Mr. Young was unclear whether the rules pertaining to client contact was DHHS or Intelliride

⁷ Hrg. Transcr. 21:9-27:7

⁸ Id. at 47:13-22

⁹ Hrg. Exhibit 2 "Exhibit 13" (Sept. 19, 2015)

¹⁰ Hrg. Transcr. 31:2-7, and 38:4-25 (Sept. 19, 2015)

¹¹ Id. at 38:6-39:17

¹² Id. at 39:7-14

policy.¹³ Mr. Young cited conversations with Mr. Nate Watson, a Medicaid attorney, and asserted that it was a HIPAA violation to contact the clients directly.¹⁴ As noted above, Ms. Miller provided similar information to Director Breiner when he asked for information regarding the clients on behalf of the Commission.¹⁵ However, Commissioner Rhoades pointed out the transportation providers already know the identity of the passengers.¹⁶

When questioned about issues related to timing, Mr. Young offered a couple of explanations. First, in cases where the driver was accused of not waiting long enough, Mr. Young stated that there were instances where his drivers would not press the arrived button when they stopped at the destination, and it would appear that the wait time was shorter.¹⁷ Second, in cases where the driver is late to pick up passengers, Mr. Young indicated his drivers regularly had issues with the Intelliride tablet appropriately populating trips in addition to trips received from Intelliride where the driver did not have a chance of being on time or was already late.¹⁸ Mr. Young indicated that he had been unable to receive information from Intelliride when an issue would arise, stating that he had reached out by email several times without success.¹⁹ Mr. Young did not provide any copies of this correspondence.

On cross-examination, Mr. Young testified that he also spoke to the driver named in the February 17, 2015, complaint regarding a woman who alleged that her wheelchair was not strapped down correctly. As a result, her wheelchair tipped over. Mr. Young stated that the driver reported to him that the client's wheelchair did not tip over. However, Mr. Young also stated that the driver did not follow GPS's policy regarding wheelchair transportation and that Mr. Young provided correction to the driver about the policy.²⁰ Mr. Young also testified about the March 4, 2015, allegation of traveling at high speed over a speed bump, resulting in a back injury to the client. Mr. Young

¹³ Hrg. Transcr. 39:1-21. (Sept. 19, 2015)

¹⁴ *Id.* at 40:2-10

¹⁵ Hrg. Exhibit 5. (Mr. Breiner spoke with Ms. Miller to request information. Ms. Miller indicated a subpoena was necessary. The Commission did Subpoena the records. HHS sought to quash the subpoena.) See also Hrg. Transcr. 4:15-5:22 (September 19, 2015).

¹⁶ *Id.* at 40:11-14

¹⁷ Hrg. Transcr. 51:18-25 (Sept. 19, 2015)

¹⁸ *Id.* at 60:1-23

¹⁹ *Id.* at 54:14-55:10, 61:13-25

²⁰ *Id.* at 63:8-64:16

stated that he attempted to investigate the complaint, but no evidence was presented to him to support the allegation.²¹

At the April 21, 2016 hearing, Ms. Jamie Chambers, general manager of Intelliride, provided testimony about Intelliride's policies and dispatch systems. Ms. Chambers testified that there were issues with the dispatch system assigning late trips, other than for an emergency, for only the first two weeks in May 2014 and this was not an ongoing issue.²² Ms. Chambers also testified regarding Intelliride's provider improvement program ("PIP"), used for providers that must take corrective steps after performing out of compliance. According to Ms. Chambers, GPS had only one driver enter the PIP, and that driver successfully completed the program.

Upon questioning regarding the complaint from the visually impaired client, Ms. Chambers testified that Intelliride's finding was that the client requested that the GPS driver drop him off at the end of the alley instead of in front of his home. Ms. Chambers went on to explain that Medicaid found the complaint to be valid because the client was not dropped off at the home address, despite the fact that the client requested the different drop-off point. The valid complaint was not considered a performance issue for the provider.²³ Upon further questioning, Ms. Chambers testified that Intelliride offers clients a referral to the Commission to file complaints. When asked about the lack of ability for the Commission to speak directly with clients who file complaints with IntelliRide, Ms. Chambers stated that the rules regarding the ability to reveal client information were within DHHS, not Intelliride. Ms. Chambers further stated that her ability to provide client information without a Public Records Request is limited.²⁴

During cross-examination, Ms. Chambers explained that Intelliride shares valid or inconclusive complaints with transportation providers when additional research about the complaint is necessary. Intelliride will not share invalid complaints, anonymous complaints, or complaints that deal with Medicaid policies with providers.²⁵ According to Ms. Chambers, Medicaid will consider a complaint valid when the complaint involves a conclusive violation of a Medicaid rule, regulation,

²¹ Hrg. Transcr. 64:17-65:1 (Sept. 19, 2015)

²² Hrg. Transcr. 6:14-25 (Apr. 21, 2016)

²³ Hrg. Transcr. 12:16-14:25 (Apr. 21, 2016)

²⁴ Hrg. Transcr. 22:11-18 (Apr. 21, 2016)

²⁵ Hrg. Transcr. 17:1-8 (Apr. 21, 2016)

policy, procedure, or item in the transportation provider handbook.²⁶ Ms. Chambers also testified that providers, including GPS drivers, had recently undergone retraining on driver performance requirements, and that she is generally satisfied with GPS's provider performance.²⁷

O P I N I O N A N D F I N D I N G S

The Commission opened the above-captioned investigation to determine whether GPS violated Nebraska statutes and Commission rules and regulations in the provision of transportation services to certain HHS clients. Commission rule 010.02H1 requires that all carriers be competent to conduct services carefully and courteously.²⁸ Under Nebraska statutes, authority holders must perform all transportation services in a fit manner and not subject passengers to undue or unreasonable delay, or the carrier may be subject to suspension or revocation of their certificate of authority.²⁹

The Commission sought to ascertain the circumstances surrounding several complaints brought to the Commission's attention through Exhibit 2, a copy of an exhibit from a previous proceeding that listed several complaints against GPS drivers during 2014 and 2015. The exhibit did not list any personally identifying information about the complainants, but listed the driver name, date of trip, the date that the complaint was filed with Intelliride, investigative notes, and an investigative finding. Commission staff filed a request for information with HHS to gather the individually identifiable information of certain complainants, along with a subpoena and protective order entered by the Hearing Officer on August 24, 2015.³⁰ HHS sent a response letter informing the Commission that it could not comply with the Commission's request pursuant to Neb. Rev. Stat. §§68-313 and 68-313.01.³¹ Without the complainants' identifying information, the Commission was unable to speak with any complainant during the investigative process. Additionally, no complainant provided testimony during either

²⁶ Hrg. Transcr. 21:5-16 (Apr. 21, 2016)

²⁷ Hrg. Transcr. 17:9-15, 18:12-25 (Apr. 21, 2016)

²⁸ Neb. Admin. Code Title 291, Ch. 3, § 010.02H1, effective December 14, 2003 (renumbered as 010.01(C)(i) effective November 23, 2016).

²⁹ See Neb. Rev. Stat. §§ 75-311 and 75-315.

³⁰ See Exhibit 4.

³¹ See Exhibit 5.

hearing on this matter regarding his or her experience with GPS.

Neither GPS nor Intelliride were able to completely answer some of the questions by the Commission. Specifically, Mr. Young indicated he did not maintain information on complaints separately from individual driver files. He also lacked a formal complaint policy. Ms. Chambers with Intelliride also noted that not all complaints are communicated to carriers. Additionally, though DHHS did not provide testimony, they declined to provide client information to the Commission. Without the contact information for clients, the Commission lacks the ability to investigate complaints fully. The Commission continues to work closely with HHS to find a meaningful way to address complaints as they arise.

During his testimony, Mr. Young asserted that he verified details of the complaints with his drivers, and felt confident that the drivers in question were not culpable. However, GPS failed to provide any drivers to offer direct testimony on any of these complaints. In the instance of the complaint filed by the visually impaired client, Mr. Young's testimony about the complaint was substantiated by testimony from Ms. Chambers. Without individual witnesses to offer testimony about any of the complaints in question, the Commission must accept Mr. Young's explanation.

Regarding timeliness issues, Mr. Young and Ms. Chambers provided conflicting testimony. Ms. Chambers indicated that the issues Mr. Young described in his testimony were only present for a short time. However, Mr. Young claimed that the Intelliride dispatch system issues are ongoing. There is insufficient evidence to clearly show which testimony is accurate. Mr. Young asserts that he has actively contacted Intelliride via email regarding some of these issues without receiving a response. However, Mr. Young failed to provide copies of any such communications. Further, Mr. Young asserts his drivers continually receive trips that are already late or that will be late by the time his driver can get to the location. Yet, Mr. Young did not provide any documentation to support his claims. Moving forward, GPS is on notice that if these types of issues continue, GPS should be prepared to explain to the Commission what steps GPS had taken to address the issue. Mr. Young should be prepared to show copies of Communications with Intelliride notifying them of issues. If drivers are receiving trips that are already late, drivers should take steps to track that information, such as taking a

should take steps to track that information, such as taking a screen shot of the tablet screen and sending the picture to Mr. Young, or notifying dispatch to create a record of the issue.

Additionally, Mr. Young asserts his drivers are typically waiting the appropriate time for clients but may not have pressed the "arrived" button. This can be verified with location information tracked within the tablet. GPS shall be expected to provide this information in the future when such claims occur. GPS should also provide additional training to its drivers about the importance of following all necessary steps in a timely manner.

Lastly, as mentioned above, the method for addressing complaints within GPS appears to lack formality. Mr. Young asserted that he handles complaints on a case-by-case basis and formal documentation was not consistently available. Documentation of complaint investigations conducted by GPS should be readily available. If a driver is subject to corrective action, GPS should be able to show what occurred in a meaningful way. While the Commission understands the need for flexibility, that flexibility should not hinder the ability for oversight by the Commission.

The Commission remains very concerned about the number and seriousness of the allegations brought forward against GPS in Exhibit 2. The testimony provided by Mr. Young and Ms. Chambers as well as the lack of testimony from any client associated with the allegations in question does not allow the Commission to determine whether GPS has conducted its business to the level that supports a determination that Nebraska statutes and Commission rules and regulations have been violated. However, GPS is strongly advised to take the above recommendations regarding its internal practices and procedures seriously. Failure to show improvements in the treatment of its customers or training of its drivers will not be tolerated.

Based on the foregoing, the Commission finds there is insufficient evidence to open a formal complaint at this time. Therefore, Docket B-1829/PI-195 should be closed.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Investigation opened in Docket No. B-1829/PI-195 be, and is hereby, closed.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

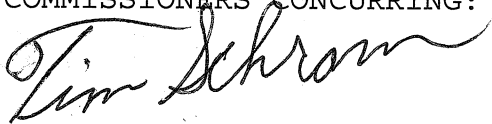
Docket No. B-1829/PI-195

Page 10

ENTERED AND MADE EFFECTIVE this 11th day of December, 2018.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



Chair

//s//Rod Johnson

//s//Mary Ridder

ATTEST:



Executive Director

Commissioner Rhoades Dissenting:

I respectfully dissent from the majority opinion to close this investigation. The Commission should open a formal complaint against Golden Plains Services, d/b/a GPS Transportation (GPS). The evidence adduced at the hearing demonstrates significant complaints about the quality of service, timeliness, and safety of GPS drivers.

After thoroughly reviewing "Late Filed Exhibit 13" ("Exhibit 13," also known as Commission Exhibit 2 in this hearing), there were a number of serious complaints raised by consumers. Exhibit 13 contains fifty-two complaints made to IntelliRide by GPS passengers regarding services. Twenty-eight were found to be valid. Some were found to be inconclusive. They were often referred to other sources for investigation. No additional information was provided to the Commission regarding the outcome of any additional investigation. Some of these may have also been valid complaints. A sampling of the valid complaints against GPS include:

- Driver failed to properly secure wheelchair resulting in tipping of chair in transit in February 2015.
- Multiple drivers reported for making inappropriate comments referring to age, race, and religion.
- Driver dropped visually impaired passenger off at incorrect location in February 2015.
- Driver late picking up passenger who only had 2 hour supply of oxygen in October 2014.
- Driver reportedly travelled over a speed bump at such a high rate of speed that the passenger experienced a back injury.
- Multiple drivers were either late for pickups, causing clients to miss appointments, or they failed to wait the contractually required amount of time before departing.

The poor service raises concerns about the competency and fitness of the carrier. Further, on a number of occasions, some GPS drivers would mark clients as a "No Show" even when the client was waiting as evidenced by IntelliRide's investigatory notes. Despite the seriousness of the some of the complaints, several drivers were permitted to continue driving for GPS. Mr. Young even acknowledged the company does not have system of tracking issues or written warnings for drivers. Rather, Mr.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Docket No. B-1829/PI-195

Page 12

Young noted there would occasionally be notes placed in the drivers' files.

The only witnesses presented to testify at these hearings were Mr. Young himself, then Transportation Director Mark Breiner, and Jamie Chambers of Intelliride. Health and Human Services declined to provide the identities of the clients in the Intelliride exhibits. No one from Health and Human Services provided any testimony in this matter. It is exceptionally difficult to fully investigate the complaints of passengers without full cooperation from other administrative entities. Mr. Young has a vested interest in defending his practices. Without additional corroborating testimony, the Commission should not dismiss these client concerns.

These passengers have serious medical conditions and need safe, reliable transportation to medical appointments. GPS has not provided consistent, safe and reliable transportation. The Commission serves as a layer of protection for the public. Closing this investigation without opening a complaint is premature. The clients served by the Medicaid system are some of the Community's most vulnerable. These complaints were all raised by Medicaid recipients. Their complaints are sufficient to warrant a formal complaint.

Accordingly, I dissent.



Commissioner Crystal Rhoades